

## DRAFT RULEMAKING SHADING LEGEND

- \* Shaded text - Rule sections or subsections not suggested for revision. This text is only for reference.
  - \* Unshaded Text - Rule sections or subsections that are suggested for revision.
  - \* Boldface Text – Suggested language additions.
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### **10 CSR 10-6.360 Control of NO<sub>x</sub> Emissions From Electric Generating Units and Non-Electric Generating Boilers**

*Purpose: The purpose of this regulation is to reduce emissions of NO<sub>x</sub> to ensure compliance with the federal NO<sub>x</sub> control plan. This rulemaking will establish emission budget for large electric generating units and non-electric generating boilers.*

- (1) Applicability.
  - (A) This rulemaking shall apply throughout Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis.
  - (B) The following units shall be NO<sub>x</sub> Budget units, and any source that includes one or more such units shall be a NO<sub>x</sub> Budget source, subject to the requirements of this rule:
    - 1. Electric generating units that serve a generator with a nameplate capacity greater than 25 MWe and—
      - A. for non-cogeneration units—
        - (I) commenced operations before January 1, 1997, and served a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or
        - (II) commenced operations in 1997 or 1998 and served a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or
        - (III) commenced operation on or after January 1, 1999, and served or serves at any time a generator producing electricity for sale.
      - B. for cogeneration units—
        - (I) commenced operations before January 1, 1997, and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or
        - (II) commenced operations in 1997 or 1998 and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

- (III) commenced operation on or after January 1, 1999, and failed or fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for any year under the Acid Rain Program.
  - 2. Non-electric generating boilers that have a maximum design heat input greater than 250 mmBtu/hr and—
    - A. for non-cogeneration boilers—
      - (I) commenced operations before January 1, 1997, and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or
      - (II) commenced operations in 1997 or 1998 and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or
      - (III) commenced operation on or after January 1, 1999, and:
        - (a) at no time served or serves a generator producing electricity for sale; or
        - (b) at any time served or serves a generator with a nameplate capacity of 25 MWe or less producing electricity for sale, and with the potential to use no more than 50 percent of the potential electrical output capacity of the unit.
    - B. for cogeneration boilers—
      - (I) commenced operations before January 1, 1997, and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or
      - (II) commenced operations in 1997 or 1998 and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or
      - (III) commenced operation on or after January 1, 1999, and qualified or qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for each year under the Acid Rain Program.
- (C) Exemptions. The director shall provide the Administrator written notice of the issuance of any permit under subsection (C) of this rule and, upon request, a copy of the permit. Notwithstanding subsection (1)(A) of this rule, a unit shall not be a NO<sub>x</sub> budget unit if the unit has a federally enforceable permit that:
  - 1. Restricts the unit to burning only natural gas or fuel oil.
  - 2. Restricts the unit's operating hours to the number calculated by dividing 25 tons of potential mass emissions by the unit's maximum potential hourly NO<sub>x</sub> mass emissions.
  - 3. Requires that the unit's maximum potential NO<sub>x</sub> mass emissions be calculated by multiplying the unit's maximum rated hourly heat input by the highest default NO<sub>x</sub> emission rate applicable to the unit under 40 C.F.R. 75.19(c), Table LM-2.
  - 4. Requires that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.
  - 5. Requires that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of

operation) during each control period to the director by November 1 of each year for which the unit is subject to the federally enforceable permit.

- (D) **Loss of Exemption.** If, for any control period, the unit does not comply with the fuel use restriction under paragraph (1)(C)1. of this rule or the operating hours restriction under paragraphs (1)(C)2. and 3. of this rule, or the fuel use or the operating hour restrictions are removed from the unit's federally enforceable permit or otherwise becomes no longer applicable, the unit shall be a NOx budget unit, subject to the requirements of this rule. Such unit shall be treated as commencing operation and, for a unit under paragraph (1)(B)1. of this rule, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

- (E) **Retired unit exemption.** This subsection applies to any NOx budget unit, other than a NOx budget opt-in source, that is permanently retired.

1. **Standard Provisions**

- A. Any NOx budget unit, other than a NOx budget opt-in source, that is permanently retired shall be exempt from the NOx budget Trading Program, except for the provisions of this subsection (E), sections (1) and (2), subsections (3)(E), (F), (G), and (5)(A) of this rule.
- B. The exemption under subparagraph (1)(E)1.A. of this rule shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NOx authorized account representative shall submit a statement to the director. A copy of the statement shall be submitted to the Administrator. The statement shall state that the unit is permanently retired and will comply with the requirements of paragraph (1)(E)2. of this rule.
- C. After receipt of the notice under subparagraph (1)(E)1.B. of this rule, the director will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (1)(E)1.A. and (1)(E)2. of this rule.

2. **Special Provisions**

- A. A unit exempt under this subsection shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
- B. The owners and operators and, to the extent applicable, the NOx authorized account representative of a unit exempt under this section shall comply with the requirements of the NOx budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
- C. A unit that is exempt under this section is not eligible to be a NOx budget opt-in source under subsection (3)(H) of this rule.
- D. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping

records may be extended for cause, at any time prior to the end of the period, in writing by the director or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

- E. A unit exempt under subsection (1)(E) of this rule and located at a source that is required, or but for this exemption would be required, to have a Title V or a non-Title V operating permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx budget permit application for the unit not less than 18 months prior to the later of May 1, 2007 or the date on which the unit is to first resume operation.
- 3. Loss of exemption. For the purpose of applying monitoring requirements under section (4) of this rule, a unit that loses its exemption under this subsection (1)(E) shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation. On the earlier of the following dates, a unit exempt under subsection (1)(E) of this rule shall lose its exemption:
  - A. The date on which the NOx authorized account representative submits a NOx budget permit application under subparagraph (1)(E)2.E. of this rule; or
  - B. The date on which the NOx authorized account representative is required under subparagraph (1)(E)2.E. of this rule to submit a NOx budget permit application.
- (F) Compliance with this rule shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Air Conservation Law and rules or any other requirements under local, state or federal law. Specifically, compliance with this rule shall not violate the permit conditions previously established under 10 CSR 10-6.060 or 10 CSR 10-6.065.
- (G) Computation of time.
  - 1. Unless otherwise stated, any time period scheduled, under the NOx budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
  - 2. Unless otherwise stated, any time period scheduled, under the NOx budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
  - 3. Unless otherwise stated, if the final day of any time period, under the NOx budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.
- (2) Definitions.
  - (A) Definitions of certain terms in this rule , other than those specified in this rule section, may be found in 10 CSR 10-6.020.
  - (B) Account certificate of representation—the completed and signed submission required by subsection (3)(B) of this rule for certifying the designation of a NOx authorized account representative for a NOx budget source or a group of identified NOx budget sources who is authorized to represent the owners and

operators of such source or sources and of the NO<sub>x</sub> budget units at such source or sources with regard to matters under the NO<sub>x</sub> budget Trading Program.

- (C) Account number—the identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.
- (D) Acid Rain emissions limitation—as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.
- (E) Administrator—the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.
- (F) Allocate or allocation—the determination by the director or the Administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> budget unit or an allocation set-aside.
- (G) Automated data acquisition and handling system or DAHS—that component of the CEMS, or other emissions monitoring system approved for use under section (4) of this rule, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by section (4) of this rule.
- (H) Boiler—an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.
- (I) CAA—the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).
- (J) Combined cycle system—a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.
- (K) Combustion turbine—an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.
- (L) Commence commercial operation—with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in subsection (1)(E) of this rule, for a unit that is a NO<sub>x</sub> budget unit under section (1) of this rule on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in subsections (1)(E) or (3)(H) of this rule, for a unit that is not a NO<sub>x</sub> budget unit under section (1) of this rule on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> budget unit under section (1) of this rule shall be the unit's date of commencement of commercial operation.
- (M) Commence operation—to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in subsection (1)(E) of this rule, for a unit that is a NO<sub>x</sub> budget unit under section (1) of this rule on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in subsection (1)(E) of this rule or subsection (3)(H) of this rule, for a unit that is not a NO<sub>x</sub> budget unit under section (1) of this rule on the date of

commencement of operation, the date the unit becomes a NOx budget unit under section (1) of this rule shall be the unit's date of commencement of operation.

- (N) Common stack—a single flue through which emissions from two or more units are exhausted.
- (O) Compliance account—NOx Allowance Tracking System account, established by the Administrator for a NOx budget unit under subsection (3)(F) of this rule, in which the NOx allowance allocations for the unit are initially recorded and in which are held NOx allowances available for use by the unit for a control period for the purpose of meeting the unit's NOx budget emissions limitation.
- (P) Compliance certification—a submission to the director or the Administrator, as appropriate, that is required under subsection (3)(D) of this rule to report a NOx budget source's or a NOx budget unit's compliance or noncompliance with this part and that is signed by the NOx authorized account representative in accordance with subsection (3)(B) of this rule.
- (Q) Continuous emission monitoring system or CEMS—the equipment required under section (4) of this rule to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with part 75 of this chapter, in a continuous emission monitoring system:
  - 1. Flow monitor;
  - 2. Nitrogen oxides pollutant concentration monitors;
  - 3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by section (4) of this rule;
  - 4. A continuous moisture monitor when such monitoring is required by section (4) of this rule; and
  - 5. An automated data acquisition and handling system.
- (R) Control period—the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.
- (S) Emissions—air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with section (4) of this rule.
- (T) Energy Information Administration—the Energy Information Administration of the United States Department of Energy.
- (U) Excess emissions—any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.
- (V) Fossil fuel—natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.
- (W) Fossil fuel-fired—with regard to a unit:
  - 1. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or
  - 2. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the

annual heat input on a Btu basis during any year; provided that the unit shall be ``fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

- (X) General account—a NO<sub>x</sub> Allowance Tracking System account, established under subsection (3)(F) of this rule, that is not a compliance account or an overdraft account.
- (Y) Generator—a device that produces electricity.
- (Z) Heat input—the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with section (4) of this rule, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.
- (AA) Life-of-the-unit, firm power contractual arrangement—a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:
  - 1. For the life of the unit;
  - 2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
  - 3. For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.
- (BB) Maximum design heat input—the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.
- (CC) Maximum potential hourly heat input—an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO<sub>2</sub>) or the minimum oxygen concentration (in percent O<sub>2</sub>).
- (DD) Maximum potential NO<sub>x</sub> emission rate—the NO<sub>x</sub> emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O<sub>2</sub>) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit start up, shutdown, and upsets.
- (EE) Maximum rated hourly heat input—a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

- (FF) Monitoring system—any monitoring system that meets the requirements of section (4) of this rule, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.
- (GG) Most stringent State or Federal emissions limitation—with regard to a NO<sub>x</sub> budget opt-in source, the lowest emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.
- (HH) Nameplate capacity—the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.
- (II) Non-title V permit—a federally enforceable permit administered by the director pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and 40 CFR 70 or 40 CFR 71.
- (JJ) NO<sub>x</sub> allowance—an authorization by the director or the Administrator under the NO<sub>x</sub> budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.
- (KK) NO<sub>x</sub> allowance deduction or deduct NO<sub>x</sub> allowances—the permanent withdrawal of NO<sub>x</sub> allowances by the Administrator from a NO<sub>x</sub> Allowance Tracking System compliance account or overdraft account to account for the number of tons of emissions from a NO<sub>x</sub> budget unit for a control period, determined in accordance with section (4) of this rule, or for any other NO<sub>x</sub> allowance surrender obligation under this part.
- (LL) NO<sub>x</sub> allowances held or hold NO<sub>x</sub> allowances—the NO<sub>x</sub> allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subsections (3)(F) and (G) of this rule, in a NO<sub>x</sub> Allowance Tracking System account.
- (MM) NO<sub>x</sub> Allowance Tracking System—the system by which the Administrator records allocations, deductions, and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> budget Trading Program.
- (NN) NO<sub>x</sub> Allowance Tracking System account—an account in the NO<sub>x</sub> Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO<sub>x</sub> allowances.
- (OO) NO<sub>x</sub> allowance transfer deadline—midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances may be submitted for recordation in a NO<sub>x</sub> budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO<sub>x</sub> budget emissions limitation for the control period immediately preceding such deadline.
- (PP) NO<sub>x</sub> authorized account representative—for a NO<sub>x</sub> budget source or NO<sub>x</sub> budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO<sub>x</sub> budget units at the source, in accordance with subsection (3)(B) of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subsection (3)(F) of this rule, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.



- (QQ) NOx budget emissions limitation—for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under paragraph (3)(F)5.A. or B. of this rule, adjusted by any deductions of such NOx allowances to account for actual utilization under paragraph (3)(E)3.E. of this rule for the control period or to account for excess emissions for a prior control period under paragraph (3)(F)5.D. of this rule or to account for withdrawal from the NOx budget Program, or for a change in regulatory status, for a NOx budget opt-in source under paragraphs (3)(H)7. or 8. of this rule.
- (RR) NOx budget opt-in permit—a NOx budget permit covering a NOx budget opt-in source.
- (SS) NOx budget opt-in source—a unit that has been elected to become a NOx budget unit under the NOx budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect under subsection (3)(H) of this rule.
- (TT) NOx budget permit—the legally binding and federally enforceable written document, or portion of such document, issued by the director, including any permit revisions, specifying the NOx budget Trading Program requirements applicable to a NOx budget source, to each NOx budget unit at the NOx budget source, and to the owners and operators and the NOx authorized account representative of the NOx budget source and each NOx budget unit.
- (UU) NOx budget source—a source that includes one or more NOx budget units.
- (VV) NOx budget Trading Program—a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.
- (WW) NOx budget unit—a unit that is subject to the NOx budget Trading Program emissions limitation under section (1) or paragraph (3)(H)1. of this rule.
- (XX) Operating—with regard to a unit under part (3)(C)3.D.(II) and paragraph (3)(H)1. of this rule, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NOx budget permit under subparagraph (3)(H)4.A. of this rule.
- (YY) Operator—any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.
- (ZZ) Opt-in—to be elected to become a NOx budget unit under the NOx budget Trading Program through a final, effective NOx budget opt-in permit under subsection (3)(H) of this rule.
- (AAA) Overdraft account—the NOx Allowance Tracking System account, established by the Administrator under subsection (3)(F) of this rule, for each NOx budget source where there are two or more NOx budget units.
- (BBB) Owner—any of the following persons:
1. Any holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn; or

2. Any holder of a leasehold interest in a NO<sub>x</sub> budget unit or in a unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn; or
  3. Any purchaser of power from a NO<sub>x</sub> budget unit or from a unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO<sub>x</sub> budget unit or the unit for which an application for a NO<sub>x</sub> budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn; or
  4. With respect to any general account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person's ownership interest with respect to NO<sub>x</sub> allowances.
- (CCC) Permitting authority—the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NO<sub>x</sub> budget Trading Program in accordance with subsection (3)(C) of this rule.
- (DDD) Receive or receipt of—when referring to the director or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the director or the Administrator in the regular course of business.
- (EEE) Recordation, record, or recorded—with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the Administrator from one NO<sub>x</sub> Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.
- (FFF) Reference method—any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR 60.
- (GGG) Serial number—when referring to NO<sub>x</sub> allowances, the unique identification number assigned to each NO<sub>x</sub> allowance by the Administrator, under subparagraph (3)(F)4.C. of this rule.
- (HHH) Source—any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a “source,” including a “source” with multiple units, shall be considered a single “facility.”
- (III) State—one of the 48 contiguous States and the District of Columbia specified in 40 CFR 51.121, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NO<sub>x</sub> budget Trading Program pursuant to 40 CFR 51.121. To the extent a State incorporates by reference the provisions of this part, the term “State” shall

mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.

- (JJJ) State trading program NO<sub>x</sub> budget—the total number of tons apportioned to all NO<sub>x</sub> budget units in a given State, in accordance with the NO<sub>x</sub> budget Trading Program, for use in a given control period.
- (KKK) Submit or serve—to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:
1. In person;
  2. By United States Postal Service; or
  3. By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.
- (LLL) Title V operating permit—a permit issued under title V of the CAA and 40 CFR 70 or 40 CFR 71.
- (MMM) Title V operating permit regulations—the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and 40 CFR 70 or 40 CFR 71.
- (NNN) Ton or tonnage—any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO<sub>x</sub> budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with section (4) of this rule, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.
- (OOO) Unit—a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.
- (PPP) Unit load—the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:
1. The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or
  2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.
- (QQQ) Unit operating day—a calendar day in which a unit combusts any fuel.
- (RRR) Unit operating hour or hour of unit operation—any hour (or fraction of an hour) during which a unit combusts any fuel.
- (SSS) Utilization—the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR 75 if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(3) General Provisions

- (A) Standard requirements.
1. Permit Requirements.

- A. The NOx authorized account representative of each NOx budget source required to have a federally enforceable permit and each NOx budget unit required to have a federally enforceable permit at the source shall:
      - (I) Submit to the director a complete NOx budget permit application under paragraph (3)(C)3. of this rule in accordance with the deadlines specified in subparagraphs (3)(C)2.B. and C. of this rule;
      - (II) Submit in a timely manner any supplemental information that the director determines is necessary in order to review a NOx budget permit application and issue or deny a NOx budget permit.
    - B. The owners and operators of each NOx budget source required to have a federally enforceable permit and each NOx budget unit required to have a federally enforceable permit at the source shall have a NOx budget permit issued by the director and operate the unit in compliance with such NOx budget permit.
    - C. The owners and operators of a NOx budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NOx budget permit application, and to have a NOx budget permit, under subsection (3)(C) of this rule for such NOx budget source.
  - 2. Monitoring requirements.
    - A. The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx budget source and each NOx budget unit at the source shall comply with the monitoring requirements of section (4) of this rule.
    - B. The emissions measurements recorded and reported in accordance with section (4) of this rule shall be used to determine compliance by the unit with the NOx budget emissions limitation under paragraph (3)(A)3. of this rule.
  - 3. Nitrogen oxides requirements.
    - A. The owners and operators of each NOx budget source and each NOx budget unit at the source shall hold NOx allowances available for compliance deductions under paragraph (3)(F)5. of this rule, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total emissions for the control period from the unit, as determined in accordance with section (4) of this rule, plus any amount necessary to account for actual utilization under subparagraph (3)(E)3.E. of this rule for the control period.
    - B. Each ton of nitrogen oxides emitted in excess of the NOx budget emissions limitation shall constitute a separate violation of this rule, the CAA, and applicable State law.
    - C. A NOx budget unit shall be subject to the requirements under subparagraph (3)(A)3.A. of this rule starting on the later of May 1, 2007 or the date on which the unit commences operation.

- D. NO<sub>x</sub> allowances shall be held in, deducted from, or transferred among NO<sub>x</sub> Allowance Tracking System accounts in accordance with subsections (3)(E), (F), (G), and (H) of this rule.
  - E. A NO<sub>x</sub> allowance shall not be deducted, in order to comply with the requirements under subparagraph (3)(A)3.A. of this rule, for a control period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.
  - F. A NO<sub>x</sub> allowance allocated by the director or the Administrator under the NO<sub>x</sub> budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO<sub>x</sub> budget Trading Program. No provision of the NO<sub>x</sub> budget Trading Program, the NO<sub>x</sub> budget permit application, the NO<sub>x</sub> budget permit, or an exemption under subsection (1)(E) of this rule and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.
  - G. A NO<sub>x</sub> allowance allocated by the director or the Administrator under the NO<sub>x</sub> budget Trading Program does not constitute a property right.
  - H. Upon recordation by the Administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from a NO<sub>x</sub> budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO<sub>x</sub> budget permit of the NO<sub>x</sub> budget unit by operation of law without any further review.
4. Excess emissions requirements. The owners and operators of a NO<sub>x</sub> budget unit that has excess emissions in any control period shall:
- A. Surrender the NO<sub>x</sub> allowances required for deduction under part (3)(F)5.D.(I) of this rule; and
  - B. Pay any fine, penalty, or assessment or comply with any other remedy imposed under part (3)(F)5.D.(III) of this rule.
5. Recordkeeping and Reporting requirements.
- A. Unless otherwise provided, the owners and operators of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the director or the Administrator.
    - (I) The account certificate of representation for the NO<sub>x</sub> authorized account representative for the source and each NO<sub>x</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with paragraph (3)(B)4.; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO<sub>x</sub> authorized account representative.

- (II) All emissions monitoring information, in accordance with section (4) of this rule; provided that to the extent that section (4) of this rule provides for a 3-year period for recordkeeping, the 3-year period shall apply.
    - (III) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx budget Trading Program.
    - (IV) Copies of all documents used to complete a NOx budget permit application and any other submission under the NOx budget Trading Program or to demonstrate compliance with the requirements of the NOx budget Trading Program.
  - B. The NOx authorized account representative of a NOx budget source and each NOx budget unit at the source shall submit the reports and compliance certifications required under the NOx budget Trading Program, including those under subsections (3)(D), (3)(H), or section (4) of this rule.
6. Liability.
- A. Any person who knowingly violates any requirement or prohibition of the NOx budget Trading Program, a NOx budget permit, or an exemption under subsection (1)(E) of this rule shall be subject to enforcement pursuant to applicable State or Federal law.
  - B. Any person who knowingly makes a false material statement in any record, submission, or report under the NOx budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.
  - C. No permit revision shall excuse any violation of the requirements of the NOx budget Trading Program that occurs prior to the date that the revision takes effect.
  - D. Each NOx budget source and each NOx budget unit shall meet the requirements of the NOx budget Trading Program.
  - E. Any provision of the NOx budget Trading Program that applies to a NOx budget source (including a provision applicable to the NOx authorized account representative of a NOx budget source) shall also apply to the owners and operators of such source and of the NOx budget units at the source.
  - F. Any provision of the NOx budget Trading Program that applies to a NOx budget unit (including a provision applicable to the NOx authorized account representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under section (4) of this rule, the owners and operators and the NOx authorized account representative of one NOx budget unit shall not be liable for any violation by any other NOx budget unit of which they are not owners or operators or the NOx authorized account representative and that is located at a source of which they are not owners or operators or the NOx authorized account representative.

7. Effect on other authorities. No provision of the NOx budget Trading Program, a NOx budget permit application, a NOx budget permit, or an exemption under subsection (1)(E) of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NOx authorized account representative of a NOx budget source or NOx budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.
- (B) NOx authorized account representative for NOx budget Sources
1. Responsibilities of the NOx authorized account representative.  
Except as provided under paragraph (3)(B)2. of this rule, each NOx budget source, including all NOx budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx budget Trading Program concerning the source or any NOx budget unit at the source.  
The NOx authorized account representative of the NOx budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx budget units at the source.  
Upon receipt by the Administrator of a complete account certificate of representation under paragraph (3)(B)4. of this rule, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOx budget source represented and each NOx budget unit at the source in all matters pertaining to the NOx budget Trading Program, notwithstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the director, the Administrator, or a court regarding the source or unit.  
No NOx budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx budget unit at a source, until the Administrator has received a complete account certificate of representation under paragraph (3)(B)4. of this rule for a NOx authorized account representative of the source and the NOx budget units at the source.

**NOx budget trading program submissions**

- (I) Each submission under the NOx budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NOx authorized account representative: ``I am authorized to make this submission on behalf of the owners and operators of the NOx budget sources or NOx budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my

inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

- (II) The director and the Administrator will accept or act on a submission made on behalf of owner or operators of a NOx budget source or a NOx budget unit only if the submission has been made, signed, and certified in accordance with paragraph (3)(B)1.E.(I) of this rule.

2. Alternate NOx authorized account representative.

- A. An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.
- B. Upon receipt by the Administrator of a complete account certificate of representation under paragraph (3)(B)4. of this rule, any representation, action, inaction, or submission by the alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.
- C. Except in paragraphs (3)(B)2. through 4., (3)(F)2. and subparagraph (3)(B)1.A. of this rule, whenever the term "NOx authorized account representative" is used in this part, the term shall be construed to include the alternate NOx authorized account representative.

3. Changing the NOx authorized account representative and the alternate NOx authorized account representative; changes in the owners and operators.

- A. Changing the NOx authorized account representative. The NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under paragraph (3)(B) 4. of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NOx authorized account representative and the owners and operators of the NOx budget source and the NOx budget units at the source.
- B. Changing the alternate NOx authorized account representative. The alternate NOx authorized account representative may be changed



at any time upon receipt by the Administrator of a superseding complete account certificate of representation under paragraph (3)(B) 4. of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NOx authorized account representative and the owners and operators of the NOx budget source and the NOx budget units at the source.

C. Changes in the owners and operators.

- (I) In the event a new owner or operator of a NOx budget source or a NOx budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the director or the Administrator, as if the new owner or operator were included in such list.
- (II) Within 30 days following any change in the owners and operators of a NOx budget source or a NOx budget unit, including the addition of a new owner or operator, the NOx authorized account representative or alternate NOx authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

4. Account certificate of representation.

- A. A complete account certificate of representation for a NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:
  - (I) Identification of the NOx budget source and each NOx budget unit at the source for which the account certificate of representation is submitted.
  - (II) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative.
  - (III) A list of the owners and operators of the NOx budget source and of each NOx budget unit at the source.
  - (IV) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or

alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx budget source and each NOx budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx budget Trading Program on behalf of the owners and operators of the NOx budget source and of each NOx budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the director, the Administrator, or a court regarding the source or unit."

(V) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.

B. Unless otherwise required by the director or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the director or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

5. Objections concerning the NOx authorized account representative.

A. Once a complete account certificate of representation under paragraph (3)(B) 4. of this rule has been submitted and received, the director and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under paragraph (3)(B) 4. of this rule is received by the Administrator.

B. Except as provided in subparagraphs (3)(B) 3.A. or B. of this rule, no objection or other communication submitted to the director or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative shall affect any representation, action, inaction, or submission of the NOx authorized account representative or the finality of any decision or order by the director or the Administrator under the NOx budget Trading Program.

C. Neither the director nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NOx authorized account representative, including private legal disputes concerning the proceeds of NOx allowance transfers.

(C) NOx budget Permits

1. General NOx budget trading program permit requirements.

A. For each NOx budget source required to have a federally enforceable permit, such permit shall include a NOx budget permit administered by the director.

- (I) For NOx budget sources required to have a title V operating permit, the NOx budget portion of the title V permit shall be administered in accordance with the director's title V operating permits regulations promulgated under 40 CFR 70 or 71, except as provided otherwise by subsection (3)(C) or (H) of this rule.
    - (II) For NOx budget sources required to have a non-title V permit, the NOx budget portion of the non-title V permit shall be administered in accordance with the director's regulations promulgated to administer non-title V permits, except as provided otherwise by subsection (3)(C) or (H) of this rule.
  - B. Each NOx budget permit (including a draft or proposed NOx budget permit, if applicable) shall contain all applicable NOx budget Trading Program requirements and shall be a complete and segregable portion of the permit under subparagraph (3)(C)1.A. of this rule.
- 2. Submission of NOx budget permit applications.
  - A. The NOx authorized account representative of any NOx budget source required to have a federally enforceable permit shall submit to the director a complete NOx budget permit application under paragraph (3)(C)3. of this rule by the applicable deadline in subparagraph (3)(C)3.B. of this rule.
  - B. Application time.
    - (I) For NOx budget sources required to have a title V operating permit:
      - (a) For any source, with one or more NOx budget units under section (1) of this rule that commence operation before January 1, 2007, the NOx authorized account representative shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule covering such NOx budget units to the director at least 18 months (or such lesser time provided under the director's title V operating permits regulations for final action on a permit application) before May 1, 2007.
      - (b) For any source, with any NOx budget unit under section (1) of this rule that commences operation on or after January 1, 2007, the NOx authorized account representative shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule covering such NOx budget unit to the director at least 18 months (or such lesser time provided under the director's title V operating permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NOx budget unit commences operation.

- (II) For NOx budget sources required to have a non-title V permit:
  - (a) For any source, with one or more NOx budget units under section (1) of this rule that commence operation before January 1, 2007, the NOx authorized account representative shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule covering such NOx budget units to the director at least 18 months (or such lesser time provided under the director's non-title V permits regulations for final action on a permit application) before May 1, 2007.
  - (b) For any source, with any NOx budget unit under section (1) of this rule that commences operation on or after January 1, 2007, the NOx authorized account representative shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule covering such NOx budget unit to the director at least 18 months (or such lesser time provided under the director's non-title V permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NOx budget unit commences operation.

C. Duty to reapply.

- (I) For a NOx budget source required to have a title V operating permit, the NOx authorized account representative shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule for the NOx budget source covering the NOx budget units at the source in accordance with the director's title V operating permits regulations addressing operating permit renewal.
- (II) For a NOx budget source required to have a non-title V permit, the NOx authorized account representative shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule for the NOx budget source covering the NOx budget units at the source in accordance with the director's non-title V permits regulations addressing permit renewal.

3. Information requirements for NOx budget permit applications. A complete NOx budget permit application shall include the following elements concerning the NOx budget source for which the application is submitted, in a format prescribed by the director:

- A. Identification of the NOx budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

- B. Identification of each NOx budget unit at the NOx budget source and whether it is a NOx budget unit under section (1) of this rule or under subsection (3)(H) of this rule;
  - C. The standard requirements under subsection (3)(A) of this rule; and
  - D. For each NOx budget opt-in unit at the NOx budget source, the following certification statements by the NOx authorized account representative:
    - (I) "I certify that each unit for which this permit application is submitted under subsection (3)(H) of 10 CSR 10-6.360 is not a NOx budget unit under subsections (1)(A) and (B) of 10 CSR 10-6.360 and is not covered by a retired unit exemption under subsection (1)(E) of 10 CSR 10-6.360 that is in effect."
    - (II) If the application is for an initial NOx budget opt-in permit, "I certify that each unit for which this permit application is submitted under subsection (3)(H) of 10 CSR 10-6.360 is currently operating, as that term is defined under section (2) of 10 CSR 10-6.360."
4. NOx budget permit contents.
- A. Each NOx budget permit (including any draft or proposed NOx budget permit, if applicable) will contain, in a format prescribed by the director, all elements required for a complete NOx budget permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.
  - B. Each NOx budget permit is deemed to incorporate automatically the definitions of terms under section (1)(A) of this rule and, upon recordation by the Administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NOx allowance to or from the compliance accounts of the NOx budget units covered by the permit or the overdraft account of the NOx budget source covered by the permit.
5. Effective date of initial NOx budget permit. The initial NOx budget permit covering a NOx budget unit for which a complete NOx budget permit application is timely submitted under subparagraph (3)(C)2.B. of this rule shall become effective by the later of:
- A. May 1, 2007;
  - B. May 1 of the year in which the NOx budget unit commences operation, if the unit commences operation on or before May 1 of that year;
  - C. The date on which the NOx budget unit commences operation, if the unit commences operation during a control period; or
  - D. May 1 of the year following the year in which the NOx budget unit commences operation, if the unit commences operation on or after October 1 of the year.
6. NOx budget permit revisions.
- A. For a NOx budget source with a title V operating permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will

revise the NOx budget permit, as necessary, in accordance with the director's title V operating permits regulations addressing permit revisions.

- B. For a NOx budget source with a non-title V permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NOx budget permit, as necessary, in accordance with the director's non-title V permits regulations addressing permit revisions.

(D) Compliance Certification

1. Compliance certification report.

- A. For each control period in which one or more NOx budget units at a source are subject to the NOx budget emissions limitation, the NOx authorized account representative of the source shall submit to the director and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

- B. The NOx authorized account representative shall include in the compliance certification report under subparagraph (3)(D)1.A. of this rule the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NOx budget emissions limitation for the control period covered by the report:

- (I) Identification of each NOx budget unit;
- (II) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit's compliance account under paragraph (3)(F)5. of this rule for the control period;
- (III) At the NOx authorized account representative's option, for units sharing a common stack and having emissions that are not monitored separately or apportioned in accordance with section (4) of this rule, the percentage of NOx allowances that is to be deducted from each unit's compliance account under paragraph (3)(F)5.E. of this rule; and
- (IV) The compliance certification under subparagraph (3)(D)1.C. of this rule.

- C. In the compliance certification report under subparagraph (3)(D)1.A. of this rule, the NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx budget units at the source in compliance with the NOx budget Trading Program, whether each NOx budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOx budget Trading Program applicable to the unit, including:

- (I) Whether the unit was operated in compliance with the NOx budget emissions limitation;
- (II) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of

the unit, and contains all information necessary to attribute emissions to the unit, in accordance with section (4) of this rule;

- (III) Whether all the emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with section (4) of this rule. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;
- (IV) Whether the facts that form the basis for certification under section (4) of this rule of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under section (4) of this rule, if any, has changed; and
- (V) If a change is required to be reported under part (3)(D)1.C.(IV) of this rule, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

- 2. Director's and Administrator's action on compliance certifications.
  - A. The director or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NOx budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.
  - B. The Administrator may deduct NOx allowances from or transfer NOx allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subparagraph (3)(D)2.A. of this rule.

(E) NOx Allowance Allocations

- 1. The State trading program budget allocated by the director under paragraph (3)(E)3. of this rule for a control period will equal the total number of tons of emissions apportioned to the NOx budget units in Missouri for the control period, as determined by the applicable, approved State implementation plan.
- 2. Timing requirements for NOx allowance allocations.
  - A. By September 30, 2005, the director will submit to the Administrator the NOx allowance allocations, in accordance with paragraph (3)(E)3. of this rule, for the control periods in 2007, 2008, and 2009.

- B. By April 1, 2007 and April 1 of each year thereafter, the director will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with paragraph (3)(E)3. of this rule, for the control period in the year that is three years after the year of the applicable deadline for submission under this subparagraph (3)(E)2.B. of this rule. If the director fails to submit to the Administrator the NO<sub>x</sub> allowance allocations in accordance with this subparagraph (3)(E)2.B. of this rule, the Administrator will allocate, for the applicable control period, the same number of NO<sub>x</sub> allowances as were allocated for the preceding control period.
  - C. By April 1, 2008 and April 1 of each year thereafter, the director will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with paragraph (3)(E)3. of this rule, for any NO<sub>x</sub> allowances remaining in the allocation set-aside for the prior control period.
3. NO<sub>x</sub> allowance allocations.
- A. Heat inputs used to calculate NO<sub>x</sub> allowance allocations
    - (I) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> budget unit under section (1) of this rule will be:
      - (a) For a NO<sub>x</sub> allowance allocation under subparagraph (3)(E)2.A. of this rule, the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under paragraph (1)(B)1. of this rule or the control period in 1995 if the unit is under paragraph (1)(B)2. of this rule; and
      - (b) For a NO<sub>x</sub> allowance allocation under subparagraph (3)(E)2.B. of this rule, the unit's heat input for the control period in the year that is four years before the year for which the allocation is being calculated.
    - (II) The unit's total heat input for the control period in each year specified under part (3)(E)3.A.(I) of this rule will be determined in accordance with 40 CFR 75 if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the director for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.
  - B. For each control period under paragraph (3)(E)2. of this rule, the permitting authority will allocate to all NO<sub>x</sub> budget units under paragraph (1)(B)1. of this rule in the State that commenced operation before May 1 of the period used to calculate heat input under part (3)(E)3.A.(I) of this rule, a total number of NO<sub>x</sub> allowances equal to 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the tons of emissions in the State trading program NO<sub>x</sub> budget apportioned to electric generating units under



paragraph (3)(E)1. of this rule in accordance with the following procedures:

- (I) The director will allocate NOx allowances to each NOx budget unit under paragraph (1)(B)1. of this rule in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under subparagraph (3)(E)3.A. of this rule, rounded to the nearest whole NOx allowance as appropriate.
- (II) If the initial total number of NOx allowances allocated to all NOx budget units under paragraph (1)(B)1. of this rule in the State for a control period under part (3)(E)3.B.(I) of this rule does not equal 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the number of tons of emissions in the State trading program NOx budget apportioned to electric generating units, the director will adjust the total number of NOx allowances allocated to all such NOx budget units for the control period under part (3)(E)3.B.(I) of this rule so that the total number of NOx allowances allocated equals 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the number of tons of emissions in the State trading program NOx budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the number of tons of emissions in the State trading program NOx budget apportioned to electric generating units divided by the total number of NOx allowances allocated under part (3)(E)3.B.(I) of this rule, and rounding to the nearest whole NOx allowance as appropriate.

C. For each control period under paragraph (3)(E)2. of this rule, the permitting authority will allocate to all NOx budget units under paragraph (1)(B)2. of this rule in the State that commenced operation before May 1 of the period used to calculate heat input under part (3)(E)3.A.(I) of this rule, a total number of NOx allowances equal to 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the tons of emissions in the State trading program NOx budget apportioned to non-electric generating units under paragraph (3)(E)1. of this rule in accordance with the following procedures:

- (I) The director will allocate NOx allowances to each NOx budget unit under paragraph (1)(B)2. of this rule in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under subparagraph (3)(E)3.A. of this rule, rounded to the nearest whole NOx allowance as appropriate.
- (II) If the initial total number of NOx allowances allocated to all NOx budget units under paragraph (1)(B)2. of this rule in the State for a control period under part (3)(E)3.C.(I) of

this rule does not equal 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the number of tons of emissions in the State trading program NOx budget apportioned to non-electric generating units, the director will adjust the total number of NOx allowances allocated to all such NOx budget units for the control period under part (3)(E)3.C.(I) of this rule so that the total number of NOx allowances allocated equals 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the number of tons of emissions in the State trading program NOx budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2007, 2008, and 2009, or 98 percent thereafter, of the number of tons of emissions in the State trading program NOx budget apportioned to non-electric generating units divided by the total number of NOx allowances allocated under part (3)(E)3.C.(I) of this rule, and rounding to the nearest whole NOx allowance as appropriate.

- D. For each control period under paragraph (3)(E)2. of this rule, the permitting authority will allocate NOx allowances to NOx budget units under section (1) of this rule in the State that commenced operation, or is projected to commence operation, on or after May 1 of the period used to calculate heat input under part (3)(E)3.A.(I) of this rule, in accordance with the following procedures:
- (I) The director will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NOx allowances equal to 1 percent in 2007, 2008, and 2009, and thereafter, of the tons of emissions in the State trading program NOx budget under paragraph (3)(E)1. of this rule, rounded to the nearest whole NOx allowance as appropriate.
  - (II) The NOx authorized account representative of a NOx budget unit under subparagraph (3)(E)3.D. of this rule may submit to the director a request, in writing or in a format specified by the director, to be allocated NOx allowances for no more than five consecutive control periods under paragraph (3)(E)2. of this rule, starting with the control period during which the NOx budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under subparagraphs (3)(E)3.B. or C. of this rule. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the director issues a permit to construct the NOx budget unit.
  - (III) In a NOx allowance allocation request under part (3)(E)3.D.(II) of this rule, the authorized account

- representative for units under paragraph (1)(B)1. of this rule may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO<sub>x</sub> budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.
- (IV) In a NO<sub>x</sub> allowance allocation request under part (3)(E)3.D.(II) of this rule, the authorized account representative for units under paragraph (1)(B)2. of this rule may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NO<sub>x</sub> budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.
- (V) The director will review, and allocate NO<sub>x</sub> allowances pursuant to, each NO<sub>x</sub> allowance allocation request under part (3)(E)3.D.(II) of this rule in the order that the request is received by the director.
- (a) Upon receipt of the NO<sub>x</sub> allowance allocation request, the director will determine whether, and will make any necessary adjustments to the request to ensure that, for units under paragraph (1)(B)1. of this rule, the control period and the number of NO<sub>x</sub> allowances specified are consistent with the requirements of part (3)(E)3.D.(II) and (III) of this rule and, for units under paragraph (1)(B)2. of this rule, the control period and the number of NO<sub>x</sub> allowances specified are consistent with the requirements of part (3)(E)3.D.(II) and (IV) of this rule.
- (b) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances not less than the number requested (as adjusted under subpart (3)(E)3.D.(V)(a) of this rule), the director will allocate the amount of the NO<sub>x</sub> allowances requested (as adjusted under subpart (3)(E)3.D.(V)(a) of this rule) to the NO<sub>x</sub> budget unit.
- (c) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has a smaller amount of NO<sub>x</sub> allowances than the number requested (as adjusted under subpart (3)(E)3.D.(V)(a) of this rule), the director will deny in part the request and allocate only the remaining

number of NOx allowances in the allocation set-aside to the NOx budget unit.

- (d) Once an allocation set-aside for a control period has been depleted of all NOx allowances, the director will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated for the control period.

- (VI) Within 60 days of receipt of a NOx allowance allocation request, the director will take appropriate action under part (3)(E)3.D.(V) of this rule and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated for the control period to the NOx budget unit.

- (VII) [Reserved Energy Efficiency and Renewable Energy Allocation Set-Aside]

- E. For a NOx budget unit that is allocated NOx allowances under subparagraph (3)(E)3.D. of this rule for a control period, the Administrator will deduct NOx allowances under paragraph (3)(F)5.B. or E. of this rule to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NOx allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NOx allowance as appropriate, provided that the number of NOx allowances to be deducted shall be zero if the number calculated is less than zero:

NOx allowances deducted for actual utilization for units under paragraph (1)(B)1. of this rule = (Unit's NOx allowances allocated for control period)-(Unit's actual control period utilization x 0.15 lb/mmBtu); and

NOx allowances deducted for actual utilization for units under paragraph (1)(B)2. of this rule = (Unit's NOx allowances allocated for control period)-(Unit's actual control period utilization x 0.17 lb/mmBtu)

Where:

``Unit's NOx allowances allocated for control period" is the number of NOx allowances allocated to the unit for the control period under subparagraph (3)(E)3.D. of this rule; and

``Unit's actual control period utilization" is the utilization (in mmBtu), as defined in section (2) of this rule, of the unit during the control period.

- F. After making the deductions for compliance under paragraph (3)(F)5.B. or E. of this rule for a control period, the Administrator

will notify the director whether any NOx allowances remain in the allocation set-aside for the control period. The director will allocate any such NOx allowances to the NOx budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:

Unit's share of NOx allowances remaining in allocation set-aside =  
Total NOx allowances remaining in allocation set-aside x (Unit's  
NOx allowance allocation / State trading program NOx budget  
excluding allocation set-aside)

Where:

``Total NOx allowances remaining in allocation set-aside" is the total number of NOx allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

``Unit's NOx allowance allocation" is the number of NOx allowances allocated under subparagraph (3)(E)3.B. or C. of this rule to the unit for the control period to which the allocation set-aside applies; and

``State trading program NOx budget excluding allocation set-aside" is the State trading program NOx budget under paragraph (3)(E)1. of this rule for the control period to which the allocation set-aside applies multiplied by 95 percent if the control period is in 2007, 2008, or 2009 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NOx allowance as appropriate.

(F) NOx Allowance Tracking System

1. NOx Allowance Tracking System accounts.

- A. Nature and function of compliance accounts and overdraft accounts. Consistent with subparagraph (3)(F)2.A. of this rule, the Administrator will establish one compliance account for each NOx budget unit and one overdraft account for each source with one or more NOx budget units. Allocations of NOx allowances pursuant to subsection (3)(E) or paragraph (3)(H)9. of this rule and deductions or transfers of NOx allowances pursuant to paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule will be recorded in the compliance accounts or overdraft accounts in accordance with subsection (3)(F) of this rule.
- B. Nature and function of general accounts. Consistent with subparagraph (3)(F)2.B. of this rule, the Administrator will establish, upon request, a general account for any person. Transfers of NOx allowances pursuant to subsection (3)(G) of this rule will be recorded in the general account in accordance with subsection (3)(F) of this rule.

2. Establishment of accounts.

- A. Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under paragraph (3)(B)4. of this rule, the Administrator will establish:
- (I) A compliance account for each NOx budget unit for which the account certificate of representation was submitted; and
  - (II) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NOx budget units.
- B. General accounts.
- (I) Any person may apply to open a general account for the purpose of holding and transferring NOx allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:
    - (a) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative;
    - (b) At the option of the NOx authorized account representative, organization name and type of organization;
    - (c) A list of all persons subject to a binding agreement for the NOx authorized account representative or any alternate NOx authorized account representative to represent their ownership interest with respect to the NOx allowances held in the general account;
    - (d) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or the alternate NOx authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NOx allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

- (e) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.
  - (f) Unless otherwise required by the director or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (II) Upon receipt by the Administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule:
  - (a) The Administrator will establish a general account for the person or persons for whom the application is submitted.
  - (b) The NOx authorized account representative and any alternate NOx authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NOx allowances held in the general account in all matters pertaining to the NOx budget Trading Program, notwithstanding any agreement between the NOx authorized account representative or any alternate NOx authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOx authorized account representative or any alternate NOx authorized account representative by the Administrator or a court regarding the general account.
  - (c) Each submission concerning the general account shall be submitted, signed, and certified by the NOx authorized account representative or any alternate NOx authorized account representative for the persons having an ownership interest with respect to NOx allowances held in the general account. Each such submission shall include the following certification statement by the NOx authorized account representative or any alternate NOx authorized account representative any: ``I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx allowances held in the general account. I certify under penalty of law that I have personally

examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

- (d) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subpart (3)(F)2.B.(II)(c) of this rule.
- (III) NOx authorized account representative for general accounts.
  - (a) An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.
  - (b) Upon receipt by the Administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule, any representation, action, inaction, or submission by any alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.
- (IV) Changing the account representatives for general accounts; changes in owners and operators.
  - (a) The NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding



application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the NOx allowances in the general account.

- (b) The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NOx authorized account representative and the persons with an ownership interest with respect to the NOx allowances in the general account.

- (c) Changes in the owners and operators.

- I. In the event a new person having an ownership interest with respect to NOx allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

- II. Within 30 days following any change in the persons having an ownership interest with respect to NOx allowances in the general account, including the addition of persons, the NOx authorized account representative or any alternate NOx authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NOx allowances in the general account to include the change.

- (V) Objections concerning the NOx authorized account representative for a general account.

- (a) Once a complete application for a general account under part (3)(F)2.B.(I) of this rule has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule is received by the Administrator.
  - (b) Except as provided in part (3)(F)2.B.(IV) of this rule, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative or the finality of any decision or order by the Administrator under the NOx budget Trading Program.
  - (c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account, including private legal disputes concerning the proceeds of NOx allowance transfers.
- C. Account identification. The Administrator will assign a unique identifying number to each account established under subparagraphs (3)(F)2.A. or B. of this rule.
- 3. Responsibilities of NOx authorized account representative.
  - A. Following the establishment of a NOx Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NOx allowances in the account, shall be made only by the NOx authorized account representative for the account.
  - B. NOx authorized account representative identification. The Administrator will assign a unique identifying number to each NOx authorized account representative.
- 4. Recordation of NOx allowance allocations.
  - A. The Administrator will record the NOx allowances for 2007 in the NOx budget units' compliance accounts and the allocation set-asides, as allocated under subsection (3)(E) of this rule. The Administrator will also record the NOx allowances allocated under part (3)(H)9.A.(I) of this rule for each NOx budget opt-in source in its compliance account.

- B. Each year, after the Administrator has made all deductions from a NOx budget unit's compliance account and the overdraft account pursuant to paragraph (3)(F)5. of this rule, the Administrator will record NOx allowances, as allocated to the unit under subsection (3)(E) of this rule or under part (3)(H)9.A.(II) of this rule, in the compliance account for the year after the last year for which NOx allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under subsection (3)(E) of this rule, in the allocation set-aside for the year after the last year for which NOx allowances were previously allocated to an allocation set-aside.
  - C. Serial numbers for allocated NOx allowances. When allocating NOx allowances to and recording them in an account, the Administrator will assign each NOx allowance a unique identification number that will include digits identifying the year for which the NOx allowance is allocated.
5. Compliance.
- A. NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit's NOx budget emissions limitation for a control period in a given year only if the NOx allowances:
    - (I) Were allocated for a control period in a prior year or the same year; and
    - (II) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under paragraph (3)(G)1. of this rule by the NOx allowance transfer deadline for that control period.
  - B. Deductions for compliance.
    - (I) Following the recordation, in accordance with paragraph (3)(G)2. of this rule, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under subparagraph (3)(F)5.A. of this rule to cover the unit's emissions (as determined in accordance with section (4) of this rule), or to account for actual utilization under paragraph (3)(E)3.E. of this rule, for the control period:
      - (a) From the compliance account; and
      - (b) Only if no more NOx allowances available under subparagraph (3)(F)5.A. of this rule remain in the compliance account, from the overdraft account. In deducting NOx allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account

with the lowest NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(II) The Administrator will deduct NOx allowances first under subpart (3)(F)5.B.(1)(a) of this rule and then under subpart (3)(F)5.B.(1)(b) of this rule:

- (a) Until the number of NOx allowances deducted for the control period equals the number of tons of emissions, determined in accordance with section (4) of this rule, from the unit for the control period for which compliance is being determined, plus the number of NOx allowances required for deduction to account for actual utilization under paragraph (3)(E)3.E. of this rule for the control period; or
- (b) Until no more NOx allowances available under subparagraph (3)(F)5.A. of this rule remain in the respective account.

C. Identification of NOx allowances.

(I) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under subparagraphs (3)(F)5.B., D., or E. of this rule. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule.

(II) First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under part (3)(F)5.C.(I) of this rule, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

- (a) Those NOx allowances that were allocated for the control period to the unit under subsection (3)(E) or (H) of this rule;
- (b) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation;

- (c) Those NOx allowances that were allocated for a prior control period to the unit under subsection (3)(E) or (H) of this rule; and
  - (d) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation.
- D. Deductions for excess emissions.
  - (I) After making the deductions for compliance under subparagraph (3)(F)5.B. of this rule, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOx allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.
  - (II) If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.
  - (III) Any NOx allowance deduction required under subparagraph (3)(F)5.D. of this rule shall not affect the liability of the owners and operators of the NOx budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:
    - (a) For purposes of determining the number of days of violation, if a NOx budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.
    - (c) Each ton of excess emissions is a separate violation.
- E. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with section (4) of this rule:
  - (I) The NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule.

- (II) Notwithstanding subpart (3)(F)5.B.(II)(a) of this rule, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under part (3)(F)5.E.(I) of this rule) of the number of tons of emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of NOx allowances required for deduction to account for actual utilization under paragraph (3)(E)3.E. of this rule for the control period.
  - F. The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (3)(F)5.B., D., or E. of this rule.
6. Banking.
- A. NOx allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:
    - (I) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule.
    - (II) The Administrator will designate, as a "banked" NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(F)5. of this rule.
  - B. Each year starting in 2008, after the Administrator has completed the designation of banked NOx allowances under part (3)(F)6.A.(II) of this rule and before May 1 of the year, the Administrator will determine the extent to which banked NOx allowances may be used for compliance in the control period for the current year, as follows:
    - (I) The Administrator will determine the total number of banked NOx allowances held in compliance accounts, overdraft accounts, or general accounts.
    - (II) If the total number of banked NOx allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program NOx budgets for the control period for the States in which NOx budget units are located, any

banked NOx allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule.

- (III) If the total number of banked NOx allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program NOx budgets for the control period for the States in which NOx budget units are located, any banked NOx allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except as follows:

- (a) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program NOx budgets for the control period for the States in which NOx budget units are located and divided by the total number of banked NOx allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts.
- (b) The Administrator will multiply the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under paragraph (3)(F)5. of this rule.

- C. Any NOx budget unit may reduce its NOx emission rate in the 2005 or 2006 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2007 to the unit in accordance with the following requirements.

- (I) Each NOx budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall monitor emissions in accordance with section (4) of this rule starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

- (II) NO<sub>x</sub> emission rate and heat input under part (3)(F)6.C.(III) through (V) of this rule shall be determined in accordance with section (4) of this rule.
- (III) Each NO<sub>x</sub> budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall reduce its NO<sub>x</sub> emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's emission rate in the 2000 control period.
- (IV) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that meets the requirements of part (3)(F)6.C.(I) and (III) of this rule may submit to the director a request for early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the control period for 2005 or 2006 in accordance with part (3)(F)6.C.(III) of this rule.
  - (a) In the early reduction credit request, the NO<sub>x</sub> authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NO<sub>x</sub> emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.
  - (b) The early reduction credit request must be submitted, in a format specified by the director, by October 31 of the year in which the NO<sub>x</sub> emission rate reductions on which the request is based are made or such later date approved by the permitting authority.
- (V) The director will allocate NO<sub>x</sub> allowances, to NO<sub>x</sub> budget units meeting the requirements of part (3)(F)6.C.(I) and (III) of this rule and covered by early reduction requests meeting the requirements of subpart (3)(F)6.C.(IV)(b) of this rule, in accordance with the following procedures:
  - (a) Upon receipt of each early reduction credit request, the director will accept the request only if the requirements of parts (3)(F)6.C.(I), (III), and subpart (3)(F)6.C.(IV)(b) of this rule are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of parts (3)(F)6.C.(II) and (IV) of this rule.
  - (b) If the State's compliance supplement pool has an amount of NO<sub>x</sub> allowances not less than the number of early reduction credits in all accepted early



reduction credit requests for 2005 and 2006 (as adjusted under subpart (3)(F)6.C.(V)(a) of this rule), the director will allocate to each NOx budget unit covered by such accepted requests one NOx allowance for each early reduction credit requested (as adjusted under subpart (3)(F)6.C.(V)(a) of this rule).

- (c) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for 2005 and 2006 (as adjusted under subpart (3)(F)6.C.(V)(a) of this rule), the permitting authority will allocate NOx allowances to each NOx budget unit covered by such accepted requests according to the following formula:

$$\text{Unit's allocated early reduction credits} = \left[ \frac{\text{Unit's adjusted early reduction credits}}{\text{Total adjusted early reduction credits requested by all units}} \right] \times (\text{Available NOx allowances from the State's compliance supplement pool})$$

where:

``Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2005 and 2006 in accepted early reduction credit requests, as adjusted under subpart (3)(F)6.C.(V)(a) of this rule.

``Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2005 and 2006 in accepted early reduction credit requests, as adjusted under subpart (3)(F)6.C.(V)(a) of this rule; and

``Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool and available for early reduction credits for 2005 and 2006.

- (VI) By May 1, 2007, the director will submit to the Administrator the allocations of NOx allowances determined under part (3)(F)6.C.(V) of this rule. The Administrator will record such allocations to the extent that they are consistent with the requirements of parts (3)(F)6.C.(I) through (V) of this rule.
- (VII) NOx allowances recorded under part (3)(F)6.C.(VI) of this rule may be deducted for compliance under paragraph

(3)(F)5. of this rule for the control periods in 2007 or 2008. Notwithstanding subparagraph (3)(F)6.A. of this rule, the Administrator will deduct as retired any NOx allowance that is recorded under part (3)(F)6.C.(VI) of this rule and is not deducted for compliance in accordance with paragraph (3)(F)5. of this rule for the control period in 2007 or 2008.

(VIII) NOx allowances recorded under part (3)(F)6.C.(VI) of this rule are treated as banked NOx allowances in 2008 for the purposes of subparagraphs (3)(F)6.A. and B. of this rule.

7. Account error. The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NOx Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NOx authorized account representative for the account.

8. Closing of general accounts.

A. The NOx authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NOx Allowance Tracking System and by correctly submitting for recordation under paragraph (3)(G)1. of this rule an NOx allowance transfer of all NOx allowances in the account to one or more other NOx Allowance Tracking System accounts.

B. If a general account shows no activity for a period of a year or more and does not contain any NOx allowances, the Administrator may notify the NOx authorized account representative for the account that the account will be closed and deleted from the NOx Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NOx allowances into the account under paragraph (3)(G)1. of this rule or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

(G) NOx Allowance Transfers

1. Submission of NOx allowance transfers. The NOx authorized account representatives seeking recordation of a NOx allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NOx allowance transfer shall include the following elements in a format specified by the Administrator:

A. The numbers identifying both the transferor and transferee accounts;

B. A specification by serial number of each NOx allowance to be transferred; and

C. The printed name and signature of the NOx authorized account representative of the transferor account and the date signed.

2. EPA recordation.

- A. Within 5 business days of receiving a NOx allowance transfer, except as provided in subparagraph (3)(G)2.B. of this rule, the Administrator will record a NOx allowance transfer by moving each NOx allowance from the transferor account to the transferee account as specified by the request, provided that:
        - (I) The transfer is correctly submitted under paragraph (3)(G)1. of this rule;
        - (II) The transferor account includes each NOx allowance identified by serial number in the transfer; and
        - (III) The transfer meets all other requirements of this rule.
      - B. A NOx allowance transfer that is submitted for recordation following the NOx allowance transfer deadline and that includes any NOx allowances allocated for a control period prior to or the same as the control period to which the NOx allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NOx allowance allocations in subparagraph (3)(F)4.B. of this rule.
      - C. Where a NOx allowance transfer submitted for recordation fails to meet the requirements of subparagraph (3)(G)2.A. of this rule, the Administrator will not record such transfer.
    - 3. Notification.
      - A. Notification of recordation. Within 5 business days of recordation of a NOx allowance transfer under paragraph (3)(G)2. of this rule, the Administrator will notify each party to the transfer. Notice will be given to the NOx authorized account representatives of both the transferor and transferee accounts.
      - B. Notification of non-recordation. Within 10 business days of receipt of a NOx allowance transfer that fails to meet the requirements of subparagraph (3)(G)2.A. of this rule, the Administrator will notify the NOx authorized account representatives of both accounts subject to the transfer of:
        - (I) A decision not to record the transfer, and
        - (II) The reasons for such non-recordation.
      - C. Nothing in this section shall preclude the submission of a NOx allowance transfer for recordation following notification of non-recordation.
- (H) Individual Unit Opt-ins
  - 1. Applicability. A unit that is in the State, is not a NOx budget unit under section (1) of this rule, vents all of its emissions to a stack, and is operating, may qualify, under this subsection (3)(H) of this rule, to become a NOx budget opt-in source. A unit that is a NOx budget unit, is covered by a retired unit exemption under subsection (1)(E) of this rule that is in effect, or is not operating is not eligible to become a NOx budget opt-in source.
  - 2. General. Except otherwise as provided in this part, a NOx budget opt-in source shall be treated as a NOx budget unit for purposes of applying subsections (A) through (G) and section (4) of this rule.

3. NOx authorized account representative. A unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, or a NOx budget opt-in source, located at the same source as one or more NOx budget units, shall have the same NOx authorized account representative as such NOx budget units.
4. Applying for NOx budget opt-in permit.
  - A. Applying for initial NOx budget opt-in permit. In order to apply for an initial NOx budget opt-in permit, the NOx authorized account representative of a unit qualified under paragraph (3)(H)1. of this rule may submit to the director at any time, except as provided under subparagraph (3)(H)7.G. of this rule:
    - (I) A complete NOx budget permit application under paragraph (3)(C)3. of this rule;
    - (II) A monitoring plan submitted in accordance with section (4) of this rule; and
    - (III) A complete account certificate of representation under paragraph (3)(B)4. of this rule, if no NOx authorized account representative has been previously designated for the unit.
  - B. Duty to reapply. The NOx authorized account representative of a NOx budget opt-in source shall submit a complete NOx budget permit application under paragraph (3)(C)3. of this rule to renew the NOx budget opt-in permit in accordance with subparagraph (3)(C)2.C. of this rule and, if applicable, an updated monitoring plan in accordance with section (4) of this rule.
5. Opt-in process. The director will issue or deny a NOx budget opt-in permit for a unit for which an initial application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule is submitted, in accordance with paragraph (3)(C)1. of this rule and the following:
  - A. Interim review of monitoring plan. The director will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the emissions rate and heat input of the unit are monitored and reported in accordance with section (4) of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.
  - B. If the director determines that the unit's monitoring plan is sufficient under paragraph (3)(H)A. of this rule and after completion of monitoring system certification under section (4) of this rule, the emissions rate and the heat input of the unit shall be monitored and reported in accordance with section (4) of this rule for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a

“NOx budget unit” prior to issuance of a NOx budget opt-in permit covering the unit.

- C. Based on the information monitored and reported under paragraph (3)(H)B. of this rule, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline emissions rate shall be calculated as the unit's total emissions (in lb) for the control period divided by the unit's baseline heat rate.
  - D. After calculating the baseline heat input and the baseline emissions rate for the unit under paragraph (3)(H)C. of this rule, the director will serve a draft NOx budget opt-in permit on the authorized account representative of the unit.
  - E. Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx budget opt-in permit, the NOx authorized account representative of the unit must submit to the director a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule. The director will treat the failure to make a timely submission as a withdrawal of the NOx budget opt-in permit application.
  - F. Issuance of draft NOx budget opt-in permit. If the NOx authorized account representative confirms the intention to opt-in the unit under paragraph (3)(H)E. of this rule, the permitting authority will issue the draft NOx budget opt-in permit in accordance with paragraph (3)(C)1. of this rule.
  - G. Notwithstanding subparagraphs (3)(H)5.A. through F. of this rule, if at any time before issuance of a draft NOx budget opt-in permit for the unit, the director determines that the unit does not qualify as a NOx budget opt-in source under paragraph (3)(H)1. of this rule, the director will issue a draft denial of a NOx budget opt-in permit for the unit in accordance with paragraph (3)(C)1. of this rule.
  - H. Withdrawal of application for NOx budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule at any time prior to the issuance of the final NOx budget opt-in permit. Once the application for a NOx budget opt-in permit is withdrawn, a authorized account representative wanting to reapply must submit a new application for a NOx budget permit under paragraph (3)(H)4. of this rule.
    - (a) Effective date. The effective date of the initial NOx budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx budget opt-in permit by the director. The unit shall be a NOx budget opt-in source and a NOx budget unit as of the effective date of the initial NOx budget opt-in permit.
6. NOx budget opt-in permit contents.
- A. Each NOx budget opt-in permit (including any draft or proposed NOx budget opt-in permit, if applicable) will contain all elements

required for a complete NOx budget opt-in permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.

- B. Each NOx budget opt-in permit is deemed to incorporate automatically the definitions of terms under section (2) and, upon recordation by the Administrator under subsection (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of NOx allowances to or from the compliance accounts of each NOx budget opt-in source covered by the NOx budget opt-in permit or the overdraft account of the NOx budget source where the NOx budget opt-in source is located.

7. Withdrawal from NOx budget Trading Program.

- A. Requesting withdrawal. To withdraw from the NOx budget Trading Program, the authorized account representative of a NOx budget opt-in source shall submit to the director a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.
- B. Conditions for withdrawal. Before a NOx budget opt-in source covered by a request under subparagraph (3)(H)7.A. of this rule may withdraw from the NOx budget Trading Program and the NOx budget opt-in permit may be terminated under subparagraph (3)(H)7.E. of this rule, the following conditions must be met:
  - (I) For the control period immediately before the withdrawal is to be effective, the NOx authorized account representative must submit or must have submitted to the director an annual compliance certification report in accordance with paragraph (3)(D)1. of this rule.
  - (II) If the NOx budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NOx budget opt-in source's compliance account, or the overdraft account of the NOx budget source where the NOx budget opt-in source is located, the full amount required under paragraph (3)(F)5.D. of this rule for the control period.
  - (III) After the requirements for withdrawal under parts (3)(H)7.B(I) and (II) of this rule are met, the Administrator will deduct from the NOx budget opt-in source's compliance account, or the overdraft account of the NOx budget source where the NOx budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to that source under paragraph (3)(H)9. of this rule for any control period for which the withdrawal is to be effective. The Administrator will close the NOx budget opt-in source's compliance account and will establish, and transfer any remaining NOx allowances

to, a new general account for the owners and operators of the NOx budget opt-in source. The NOx authorized account representative for the NOx budget opt-in source shall become the NOx authorized account representative for the general account.

- C. A NOx budget opt-in source that withdraws from the NOx budget Trading Program shall comply with all requirements under the NOx budget Trading Program concerning all years for which such NOx budget opt-in source was a NOx budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.
- D. Notification.
  - (I) After the requirements for withdrawal under subparagraphs (3)(H)7.A. and B. of this rule are met (including deduction of the full amount of NOx allowances required), the permitting authority will issue a notification to the authorized account representative of the NOx budget opt-in source of the acceptance of the withdrawal of the NOx budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.
  - (II) If the requirements for withdrawal under subparagraphs (3)(H)7.A. and B. of this rule are not met, the director will issue a notification to the NOx authorized account representative of the NOx budget opt-in source that the NOx budget opt-in source's request to withdraw is denied. If the NOx budget opt-in source's request to withdraw is denied, the NOx budget opt-in source shall remain subject to the requirements for a NOx budget opt-in source.
- E. Permit amendment. After the director issues a notification under part (3)(H)7.D.(I) of this rule that the requirements for withdrawal have been met, the director will revise the NOx budget permit covering the NOx budget opt-in source to terminate the NOx budget opt-in permit as of the effective date specified under part (3)(H)7.D.(I) of this rule. A NOx budget opt-in source shall continue to be a NOx budget opt-in source until the effective date of the termination.
- F. Reapplication upon failure to meet conditions of withdrawal. If the director denies the NOx budget opt-in source's request to withdraw, the authorized account representative may submit another request to withdraw in accordance with subparagraphs (3)(H)7.A. and B. of this rule.
- G. Ability to return to the NOx budget Trading Program. Once a NOx budget opt-in source withdraws from the NOx budget Trading Program and its NOx budget opt-in permit is terminated under this section, the authority account representative may not submit another application for a NOx budget opt-in permit under paragraph (3)(H)4. of this rule for the unit prior to the date that is 4

years after the date on which the terminated NOx budget opt-in permit became effective.

8. Change in regulatory status.

A. Notification. When a NOx budget opt-in source becomes a NOx budget unit under section (1) of this rule, the NOx authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NOx budget opt-in source's regulatory status, within 30 days of such change.

B. Director's and Administrator's action.

(I) NOx budget opt-in source to NOx budget unit.

(a) When the NOx budget opt-in source becomes a NOx budget unit under section (1) of this rule, the director will revise the NOx budget opt-in source's NOx budget opt-in permit to meet the requirements of a NOx budget permit under paragraph (3)(C)4. of this rule as of an effective date that is the date on which such NOx budget opt-in source becomes a NOx budget unit under section (1) of this rule.

(b) -----

I. The Administrator will deduct from the compliance account for the NOx budget unit under subpart (3)(H)8.B.(I)(a) of this rule, or the overdraft account of the NOx budget source where the unit is located, NOx allowances equal in number to and allocated for the same or a prior control period as:

- a. Any NOx allowances allocated to the NOx budget unit (as a NOx budget opt-in source) under paragraph (3)(H)9. of this rule for any control period after the last control period during which the unit's NOx budget opt-in permit was effective; and
- b. If the effective date of the NOx budget permit revision under subpart (3)(H)8.B.(I)(a) of this rule is during a control period, the NOx allowances allocated to the NOx budget unit (as a NOx budget opt-in source) under paragraph (3)(H)9. of this rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subpart (3)(H)8.B.(I)(a) of this rule, divided by the total number of days in the control period.

II. The NOx authorized account representative shall ensure that the compliance account of



the NOx budget unit under subpart (3)(H)8.B.(I)(a) of this rule, or the overdraft account of the NOx budget source where the unit is located, includes the NOx allowances necessary for completion of the deduction under item (3)(H)8.B.(I)(b)I. of this rule. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

(c) -----

- I. For every control period during which the NOx budget permit revised under subpart (3)(H)8.B.(I)(a) of this rule is effective, the NOx budget unit under subpart (3)(H)8.B.(I)(a) of this rule will be treated, solely for purposes of NOx allowance allocations under paragraph (3)(E)3. of this rule, as a unit that commenced operation on the effective date of the NOx budget permit revision under subpart (3)(H)8.B.(I)(a) of this rule and will be allocated NOx allowances under paragraph (3)(E)3. of this rule.
  - II. Notwithstanding item (3)(H)8.B.(I)(c)I. of this rule, if the effective date of the NOx budget permit revision under subpart (3)(H)8.B.(I)(a) of this rule is during a control period, the following number of NOx allowances will be allocated to the NOx budget unit under subpart (3)(H)8.B.(I)(a) of this rule under paragraph (3)(E)3. of this rule for the control period: the number of NOx allowances otherwise allocated to the NOx budget unit under paragraph (3)(E)3. of this rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subpart (3)(H)8.B.(I)(a) of this rule, divided by the total number of days in the control period.
- (II) Non-renewal of NOx budget opt-in permit.
- (a) When the NOx authorized account representative of a NOx budget opt-in source does not renew its NOx

budget opt-in permit under subparagraph (3)(H)4.B. of this rule, the Administrator will deduct from the NOx budget opt-in unit's compliance account, or the overdraft account of the NOx budget source where the NOx budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx budget opt-in source under paragraph (3)(H)9. of this rule for any control period after the last control period for which the NOx budget opt-in permit is effective. The authorized account representative shall ensure that the NOx budget opt-in source's compliance account or the overdraft account of the NOx budget source where the NOx budget opt-in source is located includes the NOx allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

- (b) After the deduction under subpart (3)(H)8.B.(II)(a) of this rule is completed, the Administrator will close the NOx budget opt-in source's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under paragraph (3)(F)5. of this rule, the Administrator will close the NOx budget opt-in source's compliance account and will establish, and transfer any remaining NOx allowances to, a new general account for the owners and operators of the NOx budget opt-in source. The NOx authorized account representative for the NOx budget opt-in source shall become the NOx authorized account representative for the general account.

9. NOx allowance allocations to opt-in units.

A. NOx allowance allocation.

- (I) By December 31 immediately before the first control period for which the NOx budget opt-in permit is effective, the director will allocate NOx allowances to the NOx budget opt-in source and submit to the Administrator the allocation for the control period in accordance with subparagraph (3)(H)9.B. of this rule.
- (II) By no later than December 31, after the first control period for which the NOx budget opt-in permit is in effect, and

December 31 of each year thereafter, the director will allocate NOx allowances to the NOx budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with subparagraph (3)(H)9.B. of this rule.

B. For each control period for which the NOx budget opt-in source has an approved NOx budget opt-in permit, the NOx budget opt-in source will be allocated NOx allowances in accordance with the following procedures:

- (I) The heat input (in mmBtu) used for calculating NOx allowance allocations will be the lesser of:
  - (a) The NOx budget opt-in source's baseline heat input determined pursuant to subparagraph (3)(H)5.C. of this rule; or
  - (b) The NOx budget opt-in source's heat input, as determined in accordance with section (4) of this rule, for the control period in the year prior to the year of the control period for which the allocations are being calculated.
- (II) The director will allocate NOx allowances to the NOx budget opt-in source in an amount equaling the heat input (in mmBtu) determined under subparagraph (3)(H)9.B.(I) of this rule multiplied by the lesser of:
  - (a) The NOx budget opt-in source's baseline emissions rate (in lb/mmBtu) determined pursuant to subparagraph (3)(H)5.C. of this rule; or
  - (b) The most stringent State or Federal emissions limitation applicable to the NOx budget opt-in source during the control period.

(4) Reporting and Record Keeping.

(A) General requirements. The owners and operators, and to the extent applicable, the NOx authorized account representative of a NOx budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in subpart H of 40 CFR part 75. For purposes of complying with such requirements, the definitions in section (2) of this rule and in 40 CFR 72.2 shall apply, and the terms ``affected unit," ``designated representative," and ``continuous emission monitoring system" (or ``CEMS") in 40 CFR 75 shall be replaced by the terms ``NOx budget unit," ``NOx authorized account representative," and ``continuous emission monitoring system" (or ``CEMS"), respectively, as defined in section (2) of this rule.

1. Requirements for installation, certification, and data accounting. The owner or operator of each NOx budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, as provided in subsection (3)(H) of this rule:

A. Install all monitoring systems required under section (4) for monitoring mass. This includes all systems required to monitor

NOx emission rate, concentration, heat input, and flow, in accordance with 40 CFR 75.72 and 75.76.

- B. Install all monitoring systems for monitoring heat input, if required under subsection (4)(G) of this rule for developing NOx allowance allocations.
  - C. Successfully complete all certification tests required under section (4)(B) of this rule and meet all other provisions of this rule and 40 CFR 75 applicable to the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule.
  - D. Record, and report data from the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule.
2. Compliance dates. The owner or operator must meet the requirements of subparagraphs (4)(A)1.A. through C. of this rule on or before the following dates and must record and report data on and after the following dates:
- A. NOx budget units for which the owner or operator intends to apply for early reduction credits under subparagraph (3)(F)6.D. of this rule must comply with the requirements of section (4) of this rule by May 1, 2006.
  - B. Except for NOx budget units under subparagraphs (4)(A)2.A. of this rule, NOx budget units under section (1) of this rule that commence operation before January 1, 2006, must comply with the requirements of section (4) of this rule by May 1, 2006.
  - C. NOx budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on an annual basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:
    - (I) May 1, 2006; or
    - (II) The earlier of:
      - (a) 180 days after the date on which the unit commences operation or,
      - (b) For units under paragraph (1)(B)1. of this rule, 90 days after the date on which the unit commences commercial operation.
  - D. NOx budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on a control season basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:
    - (I) The earlier of:
      - (a) 180 days after the date on which the unit commences operation or,
      - (b) For units under paragraph (1)(B)1. of this rule, 90 days after the date on which the unit commences commercial operation.
    - (II) However, if the applicable deadline under part (4)(A)2.D.(I) of this rule does not occur during a control

- period, May 1; immediately following the date determined in accordance with part (4)(A)2.D.(I) of this rule.
- E. For a NO<sub>x</sub> budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraphs (4)(A)2.A., B., or C. or subsection (3)(H) of this rule:
- (I) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;
  - (II) However, if the unit reports on a control season basis under paragraph (4)(E)4. of this rule and the applicable deadline under part (4)(A)2.E.(I) of this rule does not occur during the control period, May 1 immediately following the applicable deadline in (4)(A)2.E.(I) of this rule.
- F. For a unit for which an application for a NO<sub>x</sub> budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subsection (3)(H) of this rule.
3. Reporting data prior to initial certification.
- A. The owner or operator of a NO<sub>x</sub> budget unit that misses the certification deadline under subparagraph (4)(A)2.A. of this rule is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under subparagraph (4)(A)2.B. of this rule.
  - B. The owner or operator of a NO<sub>x</sub> budget under subparagraph (4)(A)2.C. or D. of this rule must determine, record and report mass, heat input (if required for purposes of allocations) and any other values required to determine Mass (e.g. NO<sub>x</sub> emission rate and heat input or concentration and stack flow) using the provisions of 40 CFR 75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.
4. Prohibitions.
- A. No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with section (4)(F) of this rule.
  - B. No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.
  - C. No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby void monitoring and recording mass emissions discharged into the

atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

D. No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under section (4) of this rule, except under any one of the following circumstances:

- (I) During the period that the unit is covered by a retired unit exemption under subsection (1)(E) of this rule that is in effect;
- (II) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of section (4) and 40 CFR 75, by the director for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
- (III) The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subparagraph (4)(B)2.B. of this rule.

(B) Initial certification and recertification procedures

1. The owner or operator of a NO<sub>x</sub> budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:
  - A. If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the authorized account representative shall resubmit the petition to the Administrator under section (4)(F)1. of this rule to determine if the approval applies under the NO<sub>x</sub> budget Trading Program.
  - B. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (4)(B)2. of this rule.
2. The owner or operator of a NO<sub>x</sub> budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of paragraph (4)(B)3. of this rule and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR 75 shall also meet the requirements of paragraph (4)(B)4. of this rule. The owner or operator of a NO<sub>x</sub> budget unit that is

subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

- A. Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in paragraph (4)(A)2. of this rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.
- B. Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the director determines significantly affects the ability of the system to accurately measure or record mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or appendix B to 40 CFR 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the director determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.
- C. Certification approval process for initial certifications and recertification.
  - (I) Notification of certification. The NO<sub>x</sub> authorized account representative shall submit to the permitting authority, the appropriate EPA Regional Office and the permitting authority a written notice of the dates of certification in accordance with subsection (4)(D) of this rule.
  - (II) Certification application. The authorized account representative shall submit to the director a certification application for each monitoring system required under subpart H of 40 CFR 75. A complete certification application shall include the information specified in subpart H of 40 CFR 75.
  - (III) Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional

certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO<sub>x</sub> budget Trading Program for a period not to exceed 120 days after receipt by the director of the complete certification application for the monitoring system or component thereof under part (4)(B)2.C.(II) of this rule. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the director.

- (IV) Certification application formal approval process. The director will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under part (4)(B)2.C.(II) of this rule. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR 75 and is included in the certification application will be deemed certified for use under the NO<sub>x</sub> budget Trading Program.
- (a) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the director will issue a written notice of approval of the certification application within 120 days of receipt.
  - (b) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under part (4)(B)2.C.(II) of this rule has been received by the director. If the certification application is not complete, then the director will issue a written notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative must submit the additional information required to complete the certification application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the director may issue a notice of disapproval under subpart (4)(B)2.C.(IV)(c) of this rule.



- (c) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under subpart (4)(B)2.C.(IV)(b) of this rule has been met, the director will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in part (4)(B)2.C.(V) of this rule for each monitoring system or component thereof which is disapproved for initial certification.
  - (d) Audit decertification. The director may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (4)(C)2. of this rule.
- (V) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under subpart (4)(B)2.C.(IV)(c) of this rule or a notice of disapproval of certification status under subpart (4)(B)2.C.(IV)(d) of this rule, then:
  - (a) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):
    - I. For units using or intending to monitor for NO<sub>x</sub> emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit.
    - II. For units intending to monitor for mass emissions using a pollutant concentration monitor and a flow monitor, the maximum potential concentration of and the maximum potential flow rate of the unit under section 2.1 of appendix A of 40 CFR 75;

- (b) The NOx authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with parts (4)(B)2.C.(I) and (II) of this rule; and
  - (c) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the director's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.
- 3. Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of subsection (4)(B) of this rule, except that the excepted methodology shall be deemed provisionally certified for use under the NOx budget Trading Program, as of the following dates:
  - A. For units that are reporting on an annual basis under paragraph (4)(E)4. of this rule;
    - (I) For a unit that has commences operation before its compliance deadline under paragraph (4)(B)2. of this rule, from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review; or
    - (II) For a unit that commences operation after its compliance deadline under paragraph (4)(B)2. of this rule, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for director review, or
  - B. For units that are reporting on a control period basis under part (4)(E)2.C.(II) of this rule:
    - (I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review; or
    - (II) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions

- excepted methodology under 40 CFR 75.19 until the completion of the period for the director review; or
- (III) For a unit that commences operation after its compliance deadline under paragraph (4)(B)2. of this rule, where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the director's review.
  - (IV) For a unit that has not operated after its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director's review.
4. Certification/recertification procedures for alternative monitoring systems. The NO<sub>x</sub> authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the director under subpart E of 40 CFR 75 shall apply for certification to the permitting authority prior to use of the system under the Trading Program. The NO<sub>x</sub> authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (4)(B)2. of this rule. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subparagraph (4)(B)2.C. of this rule and 40 CFR 75.20(f).
- (C) Out of control periods.
- 1. Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of 40 CFR 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 40 CFR 75.
  - 2. Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under section (4)(B) of this rule or the applicable provisions of 40 CFR 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the director will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the director revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall

follow the initial certification or recertification procedures in section (4)(B) of this rule for each disapproved system.

- (D) Notifications. The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit shall submit written notice to the permitting authority and the Administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the director.
- (E) Recordkeeping and reporting.
  - 1. General provisions.
    - A. The authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of subparagraph (3)(B)1.E. of this rule.
    - B. If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR 75 and which includes data and information required under section (4) of this rule or subpart H of 40 CFR 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72, the submission must also be signed by the designated representative or the alternative designated representative.
  - 2. Monitoring plans.
    - A. The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR 75.
    - B. The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR 75.
  - 3. Certification applications. The authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under section (4)(B) of this rule including the information required under subpart H of 40 CFR 75.
  - 4. Quarterly reports. The authorized account representative shall submit quarterly reports, as follows:
    - A. If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO<sub>x</sub> budget unit chooses to meet the annual reporting requirements of section (4) of this rule, the NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter beginning with:
      - (I) For units that elect to comply with the early reduction credit provisions under paragraph (3)(F)6. of this rule, the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

- (II) For units commencing operation prior to May 1, 2006 that are not required to certify monitors by May 1, 2005 under subparagraph (4)(A)2.A. of this rule, the earlier of the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1, 2006, the partial calendar quarter from May 1, 2006 through June 30, 2006. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2006; or
  - (III) For a unit that commences operation after May 1, 2006, the calendar quarter in which the unit commences operation, Data shall be reported from the date and hour corresponding to when the unit commenced operation.
- B. If a NO<sub>x</sub> budget unit is not subject to an Acid Rain emission limitation, then the authorized account representative shall either:
- (I) Meet all of the requirements of 40 CFR 75 related to monitoring and reporting mass emissions during the entire year and meet the reporting deadlines specified in subparagraph (4)(E)4.A. of this rule; or
  - (II) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b). The NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:
    - (a) For units that elect to comply with the early reduction credit provisions under paragraph (3)(F)6. of this rule, the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or
    - (b) For units commencing operation prior to May 1, 2006 that are not required to certify monitors by May 1, 2005 under subparagraph (4)(A)2.A. of this rule, the earlier of the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule, or if the certification tests are not completed by May 1, 2006, the partial calendar quarter from May 1, 2006 through June 30, 2006. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2006; or

- (c) For units that commence operation after May 1, 2006 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or (D) For units that commence operation after May 1, 2006 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.
  - (e) For units that commence operation after May 1, 2006 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.
- C. The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR 75 and 40 CFR 75.64.
  - (I) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR 75 for each NO<sub>x</sub> budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR 75.
  - (II) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR 75 for each NO<sub>x</sub> budget unit (or group of units using a common stack).
- D. Compliance certification. The authorized account representative shall submit to the Administrator a compliance certification in

support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

- (I) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule and 40 CFR 75, including the quality assurance procedures and specifications; and
- (II) For a unit with add-on emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate emissions; and
- (III) For a unit that is reporting on a control period basis under paragraph (4)(E)4. of this rule the NO<sub>x</sub> emission rate and concentration values substituted for missing data under subpart D of 40 CFR 75 are calculated using only values from a control period and do not systematically underestimate emissions.

(F) Petitions.

- 1. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of section (4) of this rule.
  - A. Application of an alternative to any requirement of section (4) of this rule is in accordance with section (4) of this rule only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.
  - B. Notwithstanding subparagraph (4)(F)1.A. of this rule, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by paragraph (4)(F)2. of this rule.
- 2. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to any requirement of section (4) of this rule.
  - A. The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a concentration CEMS used under 40 CFR 75.71(a)(2).
  - B. Application of an alternative to any requirement of section (4) of this rule is in accordance with section (4) of this rule only to the

extent the petition under paragraph (4)(F)2. of this rule is approved by both the permitting authority and the Administrator.

(G) Additional requirements to provide heat input data for allocations purposes.

1. The owner or operator of a unit that elects to monitor and report Mass emissions using a concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75 for any source located in a state developing source allocations based upon heat input.
2. The owner or operator of a unit that monitor and report Mass emissions using a concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75 for any source that is applying for early reduction credits under paragraph (3)(F)6. of this rule.

(5) Test Methods. *(Not applicable)*